

LOS OSOS COMMUNITY SERVICES DISTRICT

ORIGIN

In response to two citizen complaints, the Grand Jury conducted an inquiry into the lawsuit settlement agreements between the Los Osos Community Services District (LOCSD) and the law firm involved with the settlement negotiations.

The complainants were concerned over the expenditure of *public funds* in the amount of \$488,617 authorized by the LOCSD Board of Directors. Their specific concern is that in addition to paying for the litigation expenses, a portion of the funds may have been used to reimburse the attorneys for work they performed in connection with the LOCSD September 27, 2005 Recall Election and the Measure B ballot initiative. Despite several grand jury requests for detailed billing records and data, neither the LOCSD nor their attorneys were willing to provide information to the Grand Jury to enable us to determine whether any of the settlement money was used to reimburse the attorneys for work performed in connection with the recall election and/or the Measure B initiative.

AUTHORITY

California Penal Code §933.5 states: “A grand jury may at any time examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and, in addition to any other investigatory powers granted by this chapter, may investigate and report

upon the method or system of performing the duties of such district or commission.”

Definitions:

The following terms are defined for the purposes of this report:

- **Old board** - refers to the LOCSD Board of Directors sitting prior and up to the September 27, 2005 Recall Election.
- **New board** - refers to the LOCSD Board of Directors sitting subsequent to the September 27, 2005 Recall Election.
- **Law firm** - refers to the law firm (Burke, Williams and Sorensen) that represented the plaintiffs in four of the suits and the defendants in the Measure B litigation.

METHOD

The Grand Jury interviewed:

- A complainant
- The current LOCSD Interim General Manager
- A member of the **old board** — who was recalled
- Two members of the **new board** who were also members of the **old board**.

We also requested, through San Luis Obispo County Counsel’s office, detailed time logs and billing records from the **law firm**.

NARRATIVE

Prior to the recall election, two lawsuits were filed against the LOCSD, two suits were filed against the California Regional Water Quality Control

Board (RWQCB), and one suit was filed by the **old board** against the Measure B proponents. The **law firm** represented the plaintiffs in the lawsuits against the LOCSD and the RWQCB, and the defendants in the Measure B litigation.

Subsequent to the recall election, the **new board** entered into settlement negotiations with the **law firm**. As a result of the negotiations, the LOCSD entered into five individual settlement agreements covering the five lawsuits. The litigants, case numbers and settlement amounts are outlined in the table below.

Suit	Settlement Amount
CCLO ¹ , CASE ² and Al Barrow ³ vs. SRWQCB ⁴ Case No. 05CS01231	\$41,900
CCLO vs. LOCSD Case No. CV 050060	\$193,620
CCLO vs. SRWQCB Case No. CV041047	\$48,848
CCLO vs. LOCSD Case No. CV 050783	\$79,249
LOCSD vs. CASE and Al Barrow (Measure B) Case No. CV050562	\$125,000
Total	\$488,617
1 - CCLO – Concerned Citizens of Los Osos 2 - CASE – Citizens for an Affordable and Safe Environment 3 - Al Barrow – An individual 4 – [California] State Regional Water Quality Control Board	

The settlement negotiations were discussed during closed-session meetings of the **new board**. During separate interviews with the LOCSD Interim General Manager and two members of the **new board**, we were informed that minutes were not kept during the closed-session meetings. The settlement negotiations were handled between an attorney representing the LOCSD and an attorney from the **law firm**. For each of the settlement agreements, the **new board** was given a single-settlement dollar amount. During the negotiations, the **new board** was not offered *nor did they request* any detailed information or breakdown as to what activities were billed and included in the settlement amounts. The board members agreed to the settlement amounts based upon the recommendation of the attorney representing the **new board**.

In addition, one of the **new board** members stated to the Grand Jury that part of the reason for settling the lawsuits was so the LOCSD could retain the **law firm** for future work.

Two items brought to the Grand Jury's attention indicate there might have been a relationship, which existed in the period prior to the recall election, between members of the **old board**, the litigants, and the **law firm**.

1. During interviews with two members of the **new board**, who were also members of the **old board**, we were told they had contacts with CCLO, and they and CCLO were mutually supportive of each other's efforts during the time prior to the recall election.
2. A press release issued by the **new board** announced the **law firm** had been retained to represent the **new board**. The press release further stated that one of the **law firm's** attorneys was the author of the Measure B ballot initiative.

The Grand Jury made two attempts to obtain the time sheets and billing records directly from LOCSD and the **law firm**. The first instance was via a subpoena issued by the Grand Jury. The LOCSD responded — claiming attorney-client privilege — by refusing to provide us with the complete billing information for its current attorney and lack of information for the **law firm**. In the second instance, an attorney from the County Counsel's office contacted the **law firm's** attorneys directly, and requested the detailed time sheets and billing records. The **law firm's** attorneys agreed to submit the documentation "... with attorney-client privileged information redacted." The Grand Jury received the material and upon examination found that information relating to legal tasks performed and

billed had been redacted. For each billable task, the material showed only the date, billable time and initials of the person performing the task. The column showing the actual billable task performed has been left blank. As an example, one page of the material provided is included with this report as Appendix A. The only instances in which detailed information was provided were with regard to out-of-pocket expenses such as travel expense, photocopy, etc.

SUMMARY

Since public funds were used to settle the five lawsuits, the Grand Jury feels that the public has a right to know what legal services were rendered and billed, and if the billings were proper. Specifically, were public funds used to reimburse the **law firm** for work done, on the first four lawsuits listed in the above table, in connection with the September 27, 2005 recall election and Measure B initiative and are being included as billings in connection with the litigation work?

FINDINGS

Finding 1: Public funds were used to reimburse the attorneys representing the plaintiffs in the litigation against the LOCSD and the RWQCB and the defendants in the Measure B litigation.

Finding 2: Neither the **new board** nor the **law firm** are willing to provide any detailed information to the Grand Jury regarding the exact nature of the legal services rendered and billed.

Finding 3: The attorneys handling the settlement negotiations did not provide any detailed information to the **new board** regarding the actual legal services rendered and billed.

RECOMMENDATIONS

Recommendation 1: The LOCSD Board of Directors should waive the attorney-client privilege and take other necessary actions to ensure that detailed billing information will be made public to clarify whether, and to what extent, the \$488,617 of *public funds* were used to reimburse the **law firm** for work performed in connection with the recall election and the Measure B initiative, including the initial drafting of Measure B. (Findings 1 & 2)

Recommendation 2: If information, including billing records, indicates settlement funds included billable work performed in connection with the recall election and Measure B initiative, the matter should be referred to the State Bar of California for evaluation and possible further action. (Finding 3)

REQUIRED RESPONSES

- The Los Osos Community Services District: Due 07/17/06
(Findings 1, 2 & 3 and Recommendation 1)

Appendix A

The following was taken from the billing records supplied to the grand jury by the **law firm**.

Re:

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08/23/05	{Information Redacted}	2.80	SRO
08/24/05	"	3.60	AEM
08/24/05	"	0.20	CLV
08/24/05	"	1.30	GMM
08/24/05	"	0.30	GMM
08/24/05	"	1.70	JHB
08/24/05	"	1.80	SRO
08/25/05	"	3.90	AEM
08/25/05	"	0.40	CLV
08/25/05	"	2.00	GMM
08/25/05	"	1.00	GMM
08/25/05	"	3.50	SRO
08/26/05	"	3.80	AEM
08/26/05	"	1.00	CLV
08/26/05	"	0.80	GMM
08/26/05	"	3.90	SRO
09/01/05	"	2.60	SRO
09/06/05	"	0.50	GLS
09/06/05	"	0.50	GLS
09/06/05	"	3.70	SRO
09/06/05	"	1.60	SRO
09/07/05	"	2.20	CLV
09/09/05	"	1.30	SRO
09/15/05	"	3.10	JHB
09/15/05	"	1.60	JHB
09/16/05	"	1.50	GLS

STATEMENTS ARE DUE AND PAYABLE UPON PRESENTATION. STATEMENTS NOT PAID WITHIN 30 DAYS ARE
SUBJECT TO A MONTHLY SERVICE CHARGE OF 0.83% PER MONTH (10% PER ANNUM).